FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO.1025 OF 1995.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri Rajiv Patil for the appellant.

Shri Balaji Shinde for respondent No.1

CORAM: V.C.DAGA,J.

DATED: 24-08-2004.

P.C.:

. This appeal is directed against the order dated 1.7.1995 passed by the Civil Judge, SD, Pune, in Special Civil Suit No.709 of 1988, rejecting application for bringing legal heirs of deceased defendant No.3 on record.

2. The facts giving rise to the present appeal are that the present appellant filed a suit for specific performance of the contract valued at Rs. 4,25,000/-. During the pendency of the suit one of the defendants, i.e. defendant No.3 - Firdos

Maneckshaw Vajifdar expired on 12.7.1990.

3. Learned Counsel appearing for the defendants filed purshis at Ex.20 informing the factum of death of defendant No.3 on 12.7.1990.

4. Thereafter, plaintiff moved an application dated 5.1.1991 to seek details of legal heirs of defendant No.3, from defendant No.1, father of deceased defendant No.3.

5. The defendant No.1 took a strange stand that there is no obligation in law to give such information and submitted that the plaintiff may collect information from his own sources.

6. Considering the stand taken by the plaintiff and in absence of any provision in law to compel defendant No.1 to supply such information, trial Court refused to issue any directions to defendant No.1.

7. In the above circumstances, plaintiff was required to find out details of the legal heirs of the deceased defendant No.3

from his sources in which he appears to have lost sufficient time. Ultimately, after getting said details of legal heirs, plaintiff moved an application for substitution on 5.9.1994 with a prayer for condonation of delay and for setting aside abatement.

8. The trial Court rejected the said application of the plaintiff on the ground that the reasons given by the plaintiff were not sufficient for condonation of delay in moving application for substitution.

9. Having heard rival parties, it is not in dispute that plaintiff had moved application on 5.1.1991 to seek details from defendant No.1 of the legal heirs of defendant No.3. Defendant No.1 did not disclose said details and took a very strange stand. In the above view of the strange stand taken by defendant No.1, he or other members of his family cannot be heard of making any complaint, if delay has caused in moving application to bring legal heirs of defendant No.3 on record. The plaintiff and defendants are not from

the same community, though both are from Bombay. Considering lifestyle of Bombay, it is very difficult for anybody to get details of legal heirs of any deceased person, muchless of a person belonging to different community, different from the person seeking such details especially when they are staying in different localities of the city.

10. In the above circumstances, reasons given by the appellant for condonation of delay cannot be said to be unreasonable or insufficient to condone delay. It is true that more details could have been given in the civil application by taking some efforts, but that by itself cannot be said to be a ground for rejection of the application for substitution or to reject prayer for condonation of delay and/or for setting aside abatement. The impugned order is thus, liable to be quashed and set aside.

11. In the result, the impugned order is set aside. Applications at Ex.31 and 39 are allowed subject to payment of costs in the sum of Rs. 3,000/- (three thousand)

to be deposited in the trial Court within 15 days for being paid to the defendants. In the event of failure on the part of the plaintiff to deposit of costs within the said period, it will be open for the trial Court to pass appropriate order including that of dismissal of the suit for non-payment of costs.

12. Appeal stands allowed with no order as to costs.